

HB0269S02 compared with HB0269

~~deleted text~~ shows text that was in HB0269 but was deleted in HB0269S02.

inserted text shows text that was not in HB0269 but was inserted into HB0269S02.

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Representative Mike Schultz proposes the following substitute bill:

ELECTION AUDIT REQUIREMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Schultz

Senate Sponsor: _____

LONG TITLE

General Description:

This bill requires and addresses a biennial audit of elections, conducted by the Office of the Legislative Auditor General (office).

Highlighted Provisions:

This bill:

- ▶ requires the office to conduct a biennial audit of elections and related processes throughout the state that includes regular primary elections and regular general elections;
- ▶ describes the conduct and scope of the audit;
- ▶ addresses the office's authority and access to records, facilities, and equipment to enable the office to conduct the audit;
- ▶ requires compliance by government officials and employees in relation to the audit;

HB0269S02 compared with HB0269

- ▶ preserves the right to a secret ballot; and
- ▶ makes conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

20A-4-102, as last amended by Laws of Utah 2022, Chapter 342

20A-4-106, as last amended by Laws of Utah 2020, Chapter 31

20A-4-202, as last amended by Laws of Utah 2022, Chapter 156

ENACTS:

36-12-15.2, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **20A-4-102** is amended to read:

20A-4-102. Manual ballots cast at a polling place -- Counting manual ballots at polling place on day of election after polls close.

(1) (a) This section governs counting manual ballots on the day of an election, if:

(i) the ballots are cast at a polling place; and

(ii) the ballots are counted at the polling place after the polls close.

(b) Except as provided in Subsection (2) or a rule made under Subsection

20A-4-101(2)(f)(i), as soon as the polls have been closed and the last qualified voter has voted, the election judges shall count the ballots by performing the tasks specified in this section in the order that they are specified.

(c) To resolve questions that arise during the counting of ballots, a counting judge shall apply the standards and requirements of:

(i) to the extent applicable, Section 20A-4-105; and

(ii) as applicable, for an instant runoff voting race under Part 6, Municipal Alternate Voting Methods Pilot Project, Subsections 20A-4-603(3) through (5).

(2) (a) First, the election judges shall count the number of ballots in the ballot box.

HB0269S02 compared with HB0269

(b) (i) If there are more ballots in the ballot box than there are names entered in the pollbook, the judges shall examine the official endorsements on the ballots.

(ii) If, in the unanimous opinion of the judges, any of the ballots do not bear the proper official endorsement, the judges shall put those ballots in an excess ballot file and not count them.

(c) (i) If, after examining the official endorsements, there are still more ballots in the ballot box than there are names entered in the pollbook, the judges shall place the remaining ballots back in the ballot box.

(ii) One of the judges, without looking, shall draw a number of ballots equal to the excess from the ballot box.

(iii) The judges shall put those excess ballots into the excess ballot envelope and not count them.

(d) When the ballots in the ballot box equal the number of names entered in the pollbook, the judges shall count the votes.

(3) The judges shall:

(a) place all unused ballots in the envelope or container provided for return to the county clerk or city recorder; and

(b) seal that envelope or container.

(4) The judges shall:

(a) place all of the provisional ballot envelopes in the envelope provided for them for return to the election officer; and

(b) seal that envelope or container.

(5) (a) In counting the votes, the election judges shall read and count each ballot separately.

(b) In regular primary elections the judges shall:

(i) count the number of ballots cast for each party;

(ii) place the ballots cast for each party in separate piles; and

(iii) count all the ballots for one party before beginning to count the ballots cast for other parties.

(6) (a) In all elections, the counting judges shall, except as provided in Part 6, Municipal Alternate Voting Methods Pilot Project, or a rule made under Subsection

HB0269S02 compared with HB0269

20A-4-101(2)(f)(i):

(i) count one vote for each candidate designated by the marks in the squares next to the candidate's name;

(ii) count each vote for each write-in candidate who has qualified by filing a declaration of candidacy under Section 20A-9-601;

(iii) read every name marked on the ballot and mark every name upon the tally sheets before another ballot is counted;

(iv) evaluate each ballot and each vote based on the standards and requirements of Section 20A-4-105;

(v) write the word "spoiled" on the back of each ballot that lacks the official endorsement and deposit it in the spoiled ballot envelope; and

(vi) read, count, and record upon the tally sheets the votes that each candidate and ballot proposition received from all ballots, except excess or spoiled ballots.

(b) Election judges need not tally write-in votes for fictitious persons, nonpersons, or persons clearly not eligible to qualify for office.

(c) The judges shall certify to the accuracy and completeness of the tally list in the space provided on the tally list.

(d) When the judges have counted all of the voted ballots, they shall record the results on the total votes cast form.

(7) (a) ~~[Only]~~ Except as provided in Subsection (7)(b), only an election judge and a watcher may be present at the place where counting is conducted until the count is completed.

(b) An auditor conducting an audit described in Section 36-12-15.2 may be present at the place where counting is conducted, regardless of whether the count is completed.

Section 2. Section **20A-4-106** is amended to read:

20A-4-106. Manual ballots -- Sealing.

(1) After the official canvas of an election, the election officer shall store all election returns in containers that identify the containers' contents.

(2) After the ballots are stored under Subsection (1), the ballots may not be examined by anyone, except as follows:

(a) when examined during a recount conducted under the authority of Section 20A-4-401 or Title 20A, Chapter 4, Part 6, Municipal Alternate Voting Methods Pilot

HB0269S02 compared with HB0269

Project[-]; or

(b) ~~{when examined by}~~ an auditor conducting an audit described in Section 36-12-15.2 may examine the ballots:

(i) if the audit uncovers evidence that raises a substantial doubt regarding the accuracy of the results of an election, the auditor may examine the ballots until the later of:

(A) the end of the calendar year in which the election was held; or

(B) if the election is contested, when the contest is resolved; or

(ii) at any time via a subpoena or other legal process.

Section 3. Section **20A-4-202** is amended to read:

20A-4-202. Election officers -- Disposition of ballots -- Release of number of provisional ballots cast.

(1) Upon receipt of the election returns from the poll workers, the election officer shall:

(a) ensure that the poll workers have provided all of the ballots and election returns;

(b) inspect the ballots and election returns to ensure that they are sealed;

(c) for manual ballots, deposit and lock the ballots and election returns in a safe and secure place;

(d) for mechanical ballots:

(i) count the ballots; and

(ii) deposit and lock the ballots and election returns in a safe and secure place; and

(e) for bond elections, provide a copy of the election results to the board of canvassers of the local political subdivision that called the bond election.

(2) Each election officer shall:

(a) before 5 p.m. on the day after the date of the election, determine the number of provisional ballots cast within the election officer's jurisdiction and make that number available to the public;

(b) preserve ballots for 22 months after the election or until the time has expired during which the ballots could be used in an election contest;

(c) preserve all other official election returns for at least 22 months after an election;

and

(d) after that time, destroy them without opening or examining them.

(3) (a) The election officer shall package and retain all tabulating cards and other

HB0269S02 compared with HB0269

materials used in the programming of the automatic tabulating equipment.

(b) The election officer:

(i) may access these tabulating cards and other materials;

(ii) may make copies of these materials and make changes to the copies;

(iii) may not alter or make changes to the materials themselves; and

(iv) within 22 months after the election in which they were used, may dispose of those materials or retain them.

(4) (a) If an election contest is begun within 12 months, the election officer shall, except as provided in Subsection (4)(c):

(i) keep the ballots and election returns unopened and unaltered until the contest is complete; or

(ii) surrender the ballots and election returns to the custody of the court having jurisdiction of the contest when ordered or subpoenaed to do so by that court.

(b) [~~When~~] Except as provided in Subsection (4)(c), when all election contests arising from an election are complete, the election officer shall either:

(i) retain the ballots and election returns until the time for preserving them under this section has run; or

(ii) destroy the ballots and election returns remaining in the election officer's custody without opening or examining them if the time for preserving them under this section has run.

(c) An auditor conducting an audit described in Section 36-12-15.2 may examine the ballots and election returns described in this Subsection (4).

(5) (a) Notwithstanding the provisions of this section, the legislative auditor general:

(i) may make and keep copies of ballots or election returns as part of a legislative audit; and

(ii) may not examine, make copies, or keep copies, of a ballot in a manner that identifies a ballot with the voter who casts the ballot.

(b) A copy described in Subsection (5)(a) is not a record, and not subject to disclosure, under Title 63G, Chapter 2, Government Records Access and Management Act.

Section 4. Section **36-12-15.2** is enacted to read:

36-12-15.2. Elections audit.

(1) As used in this section, "office" means the Office of the Legislative Auditor

HB0269S02 compared with HB0269

General.

(2) In addition to other audits performed by the office, the office shall, each even-numbered year, in accordance with this section and under the direction of the Legislative Audit Subcommittee, conduct a comprehensive performance audit of the state's election system and controls.

(3) The audit may include the entire election process for the elections held in an-even-numbered year, including:

(a) procedures and practices that occur before or after the beginning of the year to prepare for the elections; and

(b) procedures, practices, and standards relating to:

(i) voter registration;

(ii) candidate filing and selection;

(iii) the preparation, printing, distribution, handling, examining, counting, and all other handling of ballots; and

(iv) the entire election process, including the regular primary election, the regular general election, and the determination of election results.

(4) The audit extends to the functions of all persons involved in the election process, including the Office of the Lieutenant Governor, each county clerk's office, and each board of canvassers.

(5) At a minimum, the office shall conduct a survey to audit the work of Office of the Lieutenant Governor and each county election office.

(6) Based on the results of the survey described in Subsection (5), the office shall conduct a more comprehensive audit of the jurisdictions or practices that, in the opinion of the office, present the highest risk.

(7) In addition to auditing the jurisdictions and practices described in Subsection (6), the office may audit any other jurisdictions or entities, or any practices or procedures, that the office determines necessary to ensure the success of a comprehensive performance audit of the election system.

(8) To conduct an audit described in this section, the office has the full authority described in Section 36-12-15, including:

(a) full access to **closely observe, examine, and copy** all records, documents,

HB0269S02 compared with HB0269

recordings, and other information the office determines to be useful in conducting an audit described in this section;

(b) full access to ~~closely observe, examine, and copy~~ ballots, ballot envelopes, vote tallies, canvassing records, and voter registration records;

(c) full access to ~~closely observe and examine~~ all facilities, storage areas, ~~and~~ equipment, and ~~to closely observe, examine, or copy all~~ materials, ~~that~~ the office determines to be useful in conducting an audit described in this section;

(d) full access to all staff, including full-time, part-time, and volunteer staff;

(e) full access to ~~closely observe, examine, and copy~~ all records and information relating to election audits that are conducted by the Office of the Lieutenant Governor, a county clerk, or any other person;

(f) the right to, ~~within the scope of the audit,~~ attend any meeting, including a closed meeting;

(g) the right to, ~~within the scope of the audit,~~ closely observe and examine any work or other process; and

(h) all other authority described in Section 36-12-15.

(9) As with any audit conducted under the authority described in Section 36-12-15, all officials and staff shall fully assist, and cooperate with, the office in conducting an audit described in this section.

(10) ~~{The office shall conduct the}~~In conducting an audit described in this section~~{in a manner that preserves}~~, the office:

(a) shall preserve the right of a voter to a secret ballot;

(b) shall, when examining election returns, allow the election officer or a designee of the election officer to be present to ensure the chain of custody of the election returns; and

(c) may not, while votes are being counted, communicate in any manner, directly or indirectly, by word or sign, the progress of the vote, the current result of the vote count, or any other information about the vote count.

(11) An election officer, or an election officer's designee, who is present under Subsection (10)(b) may not interfere with the performance of the audit.